Supreme Court, U.S.
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No. 85-1266

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CLYDE A. ZIMMERMAN and RICHARD ZIMMERMAN,
Petitioners,

v.

WILLIAM T. MANLEY, Acting Administrator, Agricultural Marketing Service, U.S. Dept. of Agriculture, and JOHN BLOCK, Secretary of Agriculture, U.S. Department of Agriculture

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Under 7 U.S.C. 499a and 499h, can an individual be denied employment in an area of governmental regulation solely because of his title or status with a business found in violation of certain regulations although he individually committed no violations, had no knowledge of the violations, and could not have detected said violations?

2. Does a "per se" or "irrebuttable" presumption interpretation of 7 U.S.C. 499a and 499h lead to an injust, unfair or absurd result not intended by Congress?

3. Does a "per se" or "irrebuttable" presumption interpretation of 7 U.S.C. 499a and 499h raise serious Constitutional questions in its application?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Clyde A. Zimmerman and Richard Zimmerman, Petitioners, petition for a Writ of Certiorari to review the judgment filed on October 4, 1985 of the United States Court of Appeals for the Eighth Circuit. The Court of Appeals has stayed issuance of its mandate until January 27, 1986 to allow Petitioners to file a Writ of Certiorari.

OPINION

The opinion of the Court of Appeals is attached as Appendix A.

The opinion of the Department of Agriculture is not reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 4, 1985. Petitioners' timely Petition for Rehearing was denied on November 26, 1985. On December 26, 1985 the Court of Appeals granted Petitioners' Motion for Stay and Recall of Mandate. Petitioners were granted to and until January 27, 1986 to file a Petition for Writ of Certiorari.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTES INVOLVED

7 U.S.C. 499a and 499h (1976 and Supp. V 1981) are set forth at Appendix B.

STATEMENT

Petitioners have appealed from the decision of the Department of Agriculture finding that they were "responsibly connected" with Yankee Brokerage, Inc., whose produce brokerage license was revoked in 1983. The Petitioners served as officers and/or directors at various times for the company.

The decision of the Agriculture Department means that neither Petitioner may be employed in any capacity for two years by a company engaged in or connected with the sale of fresh produce.

The Eighth Circuit Court of Appeals, relying on *Pupillo v. United States*, 755 F.2d 638 (8th Cir. 1985), affirmed the decision of the Department of Agriculture.

The Petitioners were employed by Yankee Brokerage, Inc., a corporation engaged in the marketing of fresh produce and subject to regulation by the United States Department of Agriculture. Their father, Roy Zimmerman, was the president, principal stockholder and domineering force within the company.

At various times during their employment, each Petitioner was told by their father that they had been named an officer and/or director of the company. Neither petitioner had sought the office nor received any additional compensation, duties or benefits. Board of Directors meetings were not held.

Neither Petitioner participated in any type of management decision, financial decision nor any other action compatible with the title of officer or director of a company. Neither could initiate checks, hire or fire personnel, open new accounts, or enter into any contractual obligation. Neither Petitioner had any training or education as to the duties of an officer and/or director. Standard resolutions and minutes were presented to them by the company's outside attorney who assured each Petitioner of their propriety and they were told to sign the documents. None of the documents assisted or aided the violation of the Department of Agriculture regulations by the corporation.

Their father maintained all company financial records and apparently falsified them so the company's true financial status was concealed both from the Petitioners and from the company's outside accountant. There were no signs of financial instability or weakness.

Two attorneys who had worked for the company's outside law firm confirmed the domineering role of the father, the lack of corporate meetings and the lack of knowledge of the Petitioners as to any wrong doing.

The father disappeared in October of 1981. Petitioners then discovered that their father had been skimming money to support another business and that the brokerage company's deficit exceeded one million dollars. The company was unable to pay its shippers and the license granted under the Perishable Agricultural Commodities Act (7 U.S.C. Sec. 499a et seq.) was revoked.

The act also provides that any person who has been "responsibly connected" with a company whose license has been revoked may not be employed in the agricultural commodities industry for two years after the revocation although special permission may be granted at the end of one year upon posting an appropriate bond. 7 U.S.C. 499b and 499h.

A person is presumed to be responsibly connected with the company if the individual has been an officer, director or holder of more than 10 per cent of the stock. 7 U.S.C. 499a(9).

In this cause and in *Pupillo v. United States*, 755 F.2d 638 (8th Cir. 1985), the United States Court of Appeals for the Eighth Circuit adopted a per se interpretation of the act. The District of Columbia Circuit has held the presumption to be rebuttable. *Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975); *Minotto v. United States Department of Agriculture*, 711 F.2d 406 (D.C. Cir. 1983).

The "per se" interpretation means that anyone who was an officer, director, etc., is barred per se from future employment in the produce field, regardless of fault, knowledge or culpability. The "rebuttable" presumption bars an individual unless he can show lack of fault, knowledge or culpability.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEAL ON AN IMPORTANT ISSUE OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

The Perishable Agricultural Commodities Act (7 U.S.C. Sec. 499 et seq.) regulates the shipment of perishable agricultural products in interstate and foreign commerce through a system of licensing and supervision. As a condition of doing business, dealers or brokers in such com-

modities must first obtain a license from the Department of Agriculture.

The license may be suspended or revoked for violation of various administrative rules, including failing to make prompt and full payment for commodities purchased from growers or shippers.

The act also provides that any person who has been "responsibly connected" with a company whose license has been revoked may not be employed in the agricultural commodity industry for two years after the revocation.

Under 7 U.S.C. Sec. 499a, an individual is *presumed* to be responsibly connected with a produce brokerage company (and therefore unemployable for two years) if the individual has been an officer, director or holder of more than 10 per cent of the outstanding stock of a brokerage company whose license has been revoked.

Whether this "presumption" is rebuttable or is irrebuttable has been decided in conflicting ways between United States Courts of Appeal.

The United States Court of Appeals for the District of Columbia, for example, has ruled that being a stockholder, director or officer of a culpable brokerage company was only *prima facie* evidence of responsible connection and the employee had the right to rebut such evidence. *Minotto v. United States Department of Agriculture*, 711 F.2d 406 (D.C. Cir. 1983); *Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975).

On the other hand, the United States Court of Appeals for the Eighth Circuit has ruled that the presumption is irrebuttable and that the holding of any of the named positions is *per se* grounds to bar an individual from employment in the industry, regardless of knowledge, culpability, intent or wrongdoing. *Pupillo v. United States*, 755 F.2d 638 (8th Cir. 1985). A similar finding was made in *Birkenfield v. United States*, 369 F.2d 491 (3rd

Cir. 1966) and *Zwick v. Freeman*, 373 F.2d 110 (2nd Cir. 1967).

The United States Court of Appeals for the First Circuit has not decided the precise issue before this Court but has suggested that the purpose of 7 U.S.C. Sec. 499h is to allow the Department of Agriculture to apply the "proper sanction" to "responsible officials of the violator". *Fruit Salad Inc. v. Secretary of Agriculture*, 451 F.2d 162 (1st Cir. 1971).

The "per se" standard was applied in the present case against the Petitioners.

This conflict raises important questions of Federal law that should be resolved by this Court in at least two areas.

First, the efforts of the Department of Agriculture to enforce 7 U.S.C. Sec. 499a are hampered until the nature of the presumption is clarified. Presently, individuals who receive an adverse ruling from within the Department of Agriculture may file a Petition for Review in either the judicial circuit in which they reside or in the United States Court of Appeals for the District of Columbia by virtue of the venue provisions of 18 U.S.C. Sec. 2343. The conflict in the decisions that presently exists will preempt all of the circuits except the District of Columbia because individuals will seek the more favorable standard of review offered in the D.C. circuit.

Second, the "per se" or "irrebuttable" presumption position of section 499a(9) adopted by the Second, Third and Eighth circuits imposes a Draconian penalty that is unparalleled in Federal judicial experience and must be addressed by this Court. It bars an individual from employment in a particular field because of the wrongdoing of another, *even if the individual did not participate in the wrongdoing, did not facilitate the wrongdoing, did not have knowledge of the wrongdoing and did not even have the ability to detect the wrongdoing.*

Quite simply, Petitioners' research suggests that this is the harshest interpretation of any federal or state regulation presently in existence. No other statute, law or ordinance can be found that has been applied in such an unyielding manner as the present one. Such a result could not have been the intent of Congress.

The per se rule, if unchanged, even surpasses the extraordinary ability of the Internal Revenue Service to assess a corporation officer for a corporation's back taxes. 26 U.S.C. 6671(b). In such tax cases, a "responsible person" must at least have had some ability to direct the expenditure of tax funds. *White v. United States*, 372 F.2d 513, 178 Ct. Cl. 765 (1967). A mere title or position is not sufficient under tax laws and should not be tolerated under the present facts.

Petitioners would also note that prior to this case, even the circuits following the per se rule have tried to soften the incredibly harsh application of the irrebuttable presumption by incidental findings that the individuals seeking relief were culpable in one form or another. In *Pupillo*, for example, the Court found that "Pupillo was, as night boss, second in command at Friedmeyer, and knew of the company's financial difficulties and creditors' demands for payment." 755 F.2d at 644.

No such evidence exists in the Petitioners' case nor did the Circuit Court make any finding or suggestion of culpability in its opinion (Appendix A) which makes this a factual situation that demands review by this Court.

The Petitioner would respectfully suggest that the Writ should be granted as clearly within the character of reasons set forth in Supreme Court Rule 17.

II. THE "PER SE" OR "IRREBUTTABLE" PRESUMPTION INTERPRETATION OF 7 U.S.C. 499a BY THE EIGHTH CIRCUIT IS INCONSISTENT WITH LEGISLATIVE INTENT BECAUSE IT IS UNCONSCIABLE, UNJUST AND ABSURD.

The position of the Circuit Courts that hold that the presumption in 7 U.S.C. Sec. 499a is irrebuttable ignores well settled canons of statutory interpretation and construction.

This Court has consistently held that the construction of a statute that leads to unjust or absurd consequences should be avoided. *United States v. American Trucking Assn.*, 310 U.S. 534, 543, 60 S. Ct. 1059, 84 L.Ed. 1345 (1940); *Hagger Co. v. Helvering*, 308 U.S. 389, 394, 60 S.Ct. 93, 84 L.Ed. 449 (1940);

The irrebuttable or per se application creates unjust, unconscionable and absurd results. The application bars an individual from employment in the produce field even though he personally committed no wrongful acts, had no knowledge whatsoever of any wrongful acts, and could not even have discovered the wrongdoing if the evidence had been diligently sought after.

This is made emphasized by the facts in the present case. Petitioners were employed by their father who was the president, principal stockholder and domineering force within the company. They were as told by their father that they had been named an officer and/or director of the company. Neither petitioner received any additional compensation, duties or benefits. Board of Directors meetings were not held.

Neither Petitioner participated in any type of management decision, financial decision nor any other action traditionally associated with an officer or director of a company. Standard resolutions and minutes were presented to them by the company's outside attorney who assured each Petitioner of their propriety. None of the

documents assisted or aided the violation of the Department of Agriculture regulations.

Their father maintained all company financial records and falsified them so the company's true financial status was concealed both from the Petitioners and even from the company's accountant. There were no signs of financial instability or weakness.

Two attorneys who had worked for the company's outside law firm confirmed the lack of knowledge of the Petitioners as to any wrong doing.

Despite even the hint of impropriety, culpability or inaction on behalf of the Petitioners, the per se application automatically bars them from any employment in the produce field where they have both worked since they were teenagers. They have no other vocational skills and individually have an excellent reputation in the produce industry.

Such an interpretation is clearly so harsh as to be absurd, unfair and even unconscionable when compared with alternative interpretations that achieve the same legislative intent. In *Quinn v. Butz*, 510 F.2d 743 at 755-756 (1975), the D.C. Circuit exhaustively discussed the alternative interpretations that fully met the needs of the Department of Agriculture, were more consistent with other expressions of Congressional intent and were much fairer.

It is also important to note that Congress has frequently used rebuttable presumptions and inferences to meet similar situations and there is nothing in the legislative history of the Perishable Agricultural Commodities Act that would suggest or require a harsher interpretation. See, for example, *Turner v. United States*, 396 U.S. 398, 90 S.Ct. 642, 24 L.Ed.2d 610 (1970); *Adler v. Board of Education*, 342 U.S. 485, 494-496, 72 S.Ct. 380, 96 L.Ed. 517 (1952); *Bandini Petroleum Co. v. Superior*

Court, 284 U.S. 8, 18-19, 52 S.Ct. 103, 76 L.Ed. 136 (1931).

III. THE "PER SE" OR "IRREBUTTABLE" PRESUMPTION INTERPRETATION OF 7 U.S.C. 499a BY THE EIGHTH CIRCUIT IS INCONSISTENT WITH LEGISLATIVE INTENT BECAUSE IT RAISES SERIOUS CONSTITUTIONAL QUESTIONS.

The law is well settled that where alternative interpretations of a statute are possible, a court must give effect to the interpretation that does not raise constitutional questions. *N.A.A.C.P. v. Button*, 371 U.S. 415, 430, 83 S.Ct. 328, 9 L.Ed.2d 405, 416-417 (1963); *Eastern R. Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 138, 81 S.Ct. 523, 5 L.Ed. 2d 464, 471.

There are at least two possible interpretations of 7 U.S.C. Sec. 499a(9). The per se or irrebuttable presumption utilized by the Eighth Circuit raises serious Constitutional questions under the First, Fifth and Fourteenth Amendments to the United States Constitution.

For example, the Petitioners are being denied employment in their chosen field of endeavor solely because they were associated with an individual who violated PACA rules. Their only "act" of cupability was the holding of a title. There is no evidence that they furthered the violations, assisted in them, had knowledge of them, or even could have had knowledge of them. In fact, the evidence shows that they were shown falsified financial records that verified that no violations had occurred.

The First Amendment protects an individual's right to associate with whomever he pleases, even in business or economic positions. *N.A.A.C.P. v. Buttons*, supra; *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 84 S. Ct. 1113, 12 L.Ed. 2d 405 (1963). See also dicta in *Griswold v. Connecticut*, 381 U.S. 479, 14 L.Ed.2d 510, 85 S.Ct. 1678.

Association with a group that breaks the law or advocates breaking the law cannot be penalized unless it is affirmatively shown that the individual had more than mere membership or perfunctory participation, i.e. guilt by association was unacceptable. *Baird v. State Bar of Arizona*, 401 U.S. 1, 91 S.Ct. 702, 27 L.Ed.2d 639 (1971) and cases therein.

The Fifth and Fourteenth Amendments come into play because the per se interpretation prevents the Petitioners from working in the area of their choice without any showing wrongful conduct, cupability, or compelling state interest. *In Re Griffiths*, 413 U.S. 717, 37 L.Ed.2d 910, 93 S.Ct. 2851 (1973); *Baird v. State Bar of Arizona*, supra; *United States v. Robel*, 389 U.S. 258, 88 S. Ct. 419, 19 L.Ed.2d 508. In other words, they are being punished for the acts of others without just cause or excuse and are being denied due process of law.

The "rebuttable" presumption interpretation avoids these Constitutional problems but still gives the Department of Agriculture the ability to enforce its rules and regulations in an effective manner.

It is also well settled that a statute, law or regulation is "penal" in nature if it provides for penalties, forfeitures, revocations or suspensions. 73 Am.Jur.2d "Statutes", Sec. 293, Pg. 452.

Such statutes must be *strictly construed* and leniency shown to those affected when questions of interpretation are involved. *United States v. Fitterer*, 710 F.2d 1328 (8th Cir. 1983); *United States v. Colvin*, 644 F.2d 703 (8th Cir. 1981).

The per se interpretation of 7 U.S.C. Sec. 499a(9) is inconsistent with that rule because the Courts elect to use the most penal of two interpretations to a statute.

The per se standard bars an individual from working in the fresh produce field without any showing of guilt

or cupability. An alternative interpretation, equally supported by legislative intent, grants the right to an individual to rebut the presumption of misconduct and therefore protects the innocent.

The per se interpretation is also in conflict with the Eighth Circuit's own decision in *State of Missouri v. National Organization for Women*, 620 F.2d 1301 (8th Cir. 1980). The *NOW* case held that a court cannot impute to Congress an intent to invade a constitutional right. 620 F.2d at 1318-19. Yet the Court's present holding imputes violations of First, Fifth and Fourteenth Amendment rights noted above.

CONCLUSION

Petitioners respectfully submit to this Court that this cause involves a decision that conflicts with decisions in other circuits, involves important and recurring questions of federal law which should be settled by this Court, creates unconscionable judicial interpretations of a statute and that the decision below was in error and that justice requires the intervention of this Court.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-2433

CLYDE A. ZIMMERMAN and RICHARD ZIMMERMAN,
Petitioners,

v.

WILLIAM T. MANLEY, Acting Administrator, Agricultural Marketing, U.S. Department of Agriculture and JOHN BLOCK, Secretary of Agriculture, U. S. Department of Agriculture,
Respondents.

Submitted: September 9, 1985
Filed: October 4, 1985

Review of Orders of the
United States Department of Agriculture,
Agricultural Marketing Service

Before ROSS, Circuit Judge, FLOYD R. GIBSON, Senior Circuit Judge, and ARNOLD, Circuit Judge.

PER CURIAM.

Upon a careful consideration of the record, the briefs, and arguments of the parties, the Court has concluded that the orders of the Agricultural Marketing Service, an agency of the United States Department of Agricul-

ture, are supported by substantial evidence on the record as a whole, that no error of law appears, and that an opinion would have no precedential value. The orders are hereby affirmed on the basis of *Pupillo v. United States*, 755 F.2d 638 (8th Cir. 1985). *See* 8th Cir. R. 14.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

§ 499a. Definitions

When used in this Act [7 USCS §§ 499a et seq.]—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia;

(4) The term "perishable agricultural commodity"—

(A) Means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character; and

(B) Includes cherries in brine as defined by the Secretary in accordance with trade usages;

(5) the term "commission merchant" means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another;

(6) The term "dealer" means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail

shall be considered as a "dealer" until the invoice cost of his purchases of perishable agricultural commodities in any calendar year are in excess of $100,000; and (C) no person buying any commodity for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph (4) of this section. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3 [7 USCS § 499c], and in such case and while the license is in effect such person shall be considered as a "dealer";

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a "broker" if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of $100,000 in any calendar year.

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside

of the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act [7 USCS §§ 499a et seq.]

(9) The term "responsibly connected" means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

(10) The terms "employ" and "employment" mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.

(June 10, 1930, c. 436, § 1, 46 Stat. 531; Apr. 13, 1934, c. 120, § 1, 48 Stat. 584; Aug. 20, 1937, c. 719, § 1, 50 Stat. 725; June 29, 1940, c. 456, §§ 1, 2, 54 Stat. 696; Oct. 1, 1962, P. L. 87-725, §§ 1, 2, 76 Stat. 673; Nov. 4, 1969, P. L. 91-107, §§ 1, 2, 83 Stat. 182.)

§ 499h. Grounds for suspension or revocation of license

(a) Authority of Secretary. Whenever (a) the Secretary determines, as provided in section 6 [7 USCS § 499f], that any commission merchant, dealer, or broker has violated any of the provisions of section 2 [7 USCS § 499b], or (b) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14(b) of this Act [7 USCS § 499n(b)], the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender;

(b) Unlawful employment of certain persons; restrictions; bond assuring compliance; approval of employment without bond; change in amount of bond; payment of increased amount; penalties. Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2 [7 USCS § 499b], but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or (3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c) [7 USCS § 499g(c)].

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2 [7 USCS § 499b], if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act [7 USCS §§ 499a et seq.] and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c) [7 USCS § 499g(c)], which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the

bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section.

(c) Fraud in procurement. If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act [7 USCS §§ 499a et seq.] by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in paragraph (b) of section 4 [7 USCS § 499d(b)].

(d) Injunction. In addition to being subject to the penalties provided by section 3(a) of this Act [7 USCS § 499c(a)], any commission merchant, dealer, or broker who engages in or operates such business without a valid and effective license from the Secretary shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without a valid and effective license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license.

(June 10, 1930, c. 436, § 8, 46 Stat. 535; Apr. 13, 1934, c. 120, § 14, 48 Stat. 588; Aug. 20, 1937, c. 719, § 11, 50 Stat. 730; July 30, 1956, c. 786, § 5, 70 Stat. 727; Oct. 1, 1962, P. L. 87-725, § 11, 76 Stat. 675.)